



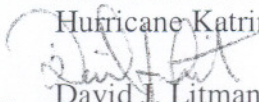
**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

Memorandum

Subject: ACTION: Withdrawal of Davis-Bacon Act Suspension
and Clarification of other Emergency Authorities for
Hurricane Katrina Relief Efforts

Date: November 29, 2005

From: 
David J. Litman
Senior Procurement Executive

Reply to
Attn. of:

To: Procurement Management Council Members

1. On September 8, 2005, President Bush issued a Proclamation suspending the application of the Davis-Bacon Act to construction contracts that were entered into on or after September 8, 2005, and performed in the counties listed in the Proclamation. **On November 3, 2005, President Bush signed Attachment 1 revoking the September 8, 2005, Proclamation, thus reinstating the application of the Davis-Bacon Act effective on November 8, 2005.** This reinstatement applies "to all contracts for which bids are opened or negotiations concluded on or after November 8, 2005." Attachments 2 and 3 discuss the impact of the revocation on applicable contracts.
2. On September 2, 2005, I granted a Class Justification for Other Than Full and Open Competition under FAR 6.302-2 to support Hurricane Katrina recovery and transportation infrastructure efforts. This approval expires on December 1, 2005, and will not be extended.
3. In accordance with section 101(1) of Pub. L. 109-62, the \$10 million threshold in FAR 13.500, Test Program for Certain Commercial Items, paragraph (e) is applicable to procurements in support of Hurricane Katrina rescue and relief efforts.
4. As a result of the increase in the micro-purchase threshold to \$15,000, authorized personnel acting in support of Hurricane Katrina rescue and relief efforts may place orders up to \$15,000 without:
 - (a) Obtaining competition if the price is determined to be fair and reasonable.
 - (b) Regard to the Buy American Act.
 - (c) Setting aside purchases below the threshold exclusively for small business concerns.

5. Notwithstanding paragraph 4(c) above, the Office of Management and Budget policy is to ensure that small business concerns are provided maximum practicable opportunity under the circumstances to participate in Federal acquisitions as prime contractors and subcontractors. Also, agency personnel are still required to equitably distribute purchases among qualified suppliers.
6. Although registration in the Central Contractor Registration (CCR) can be waived when utilizing urgent and compelling justifications or when responding to natural disasters (see FAR 4.1102(a) (3)), contracting officers should strive to have vendors register in CCR as part of receiving an award in excess of the micro-purchase threshold. Further, vendors seeking to do business with the Federal Government should be referred to CCR (www.ccr.gov) for registration.
7. Agencies are authorized to use Part 12 for micro-purchases directly related to Hurricane Katrina rescue and relief efforts. SF 1449, Solicitation/Contract/Order for Commercial Items, may be used to place open market purchases. This form already incorporates by reference the clause at 52.212-4 and indicates that clause 52.212-5 is attached.
8. Under FAR 26.201, which implements the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.) contracting officers must give preference to organizations, firms and individuals residing in or doing business primarily in the areas affected by Hurricane Katrina.

If you have any questions or comments concerning these authorities, please call Elaine Wheeler at (202) 366-4272 or Elaine.wheeler@dot.gov.

Attachments (3)



Federal Register

Tuesday,
November 8, 2005

Part IV

The President

Proclamation 7959—Revoking
Proclamation 7924

Presidential Documents

Title 3—

Proclamation 7959 of November 3, 2005

The President

Revoking Proclamation 7924

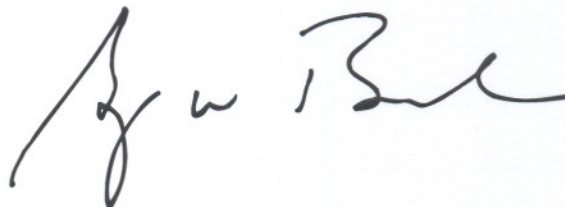
By the President of the United States of America

A Proclamation

WHEREAS, the provisions of subchapter IV of chapter 31 of title 40, United States Code, 40 U.S.C. 3141–3148, and the provisions of all other acts, Executive Orders, proclamations, rules, regulations, or other directives providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code, were suspended by Proclamation 7924 of September 8, 2005, within specified geographic areas affected by Hurricane Katrina until otherwise provided;

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 202 of the National Emergencies Act, 50 U.S.C. 1622, do by this Proclamation revoke, effective November 8, 2005, Proclamation 7924 as to all contracts for which bids are opened or negotiations concluded on or after November 8, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.





**U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division**

November 2005

**Guidance on the REINSTATEMENT OF THE DAVIS-BACON ACT Provisions in
Areas Impacted by Hurricane Katrina**

The Wage and Hour Division (WHD) of the U.S. Department of Labor administers and enforces the provisions of the Davis-Bacon Act (DBA), the Copeland "anti-kickback" Act, and various other statutes including the Fair Labor Standards Act.

On November 3, 2005, President George W. Bush issued a Proclamation that revoked Proclamation Number 7924 of September 8, 2005, and reinstated the provisions of the DBA in areas affected by Hurricane Katrina.

This document provides answers to some basic questions following the reinstatement of the DBA and portions of the Copeland Act in areas affected by Hurricane Katrina.

1. What is the status of contracts for construction that were awarded during the suspension period?

Any prime contracts for construction awarded during the suspension of the DBA from September 8, 2005, to November 7, 2005, are not subject to the prevailing wage requirements of the DBA. Also, any subcontracts awarded under such prime contracts should not contain prevailing wage determinations regardless of the date the subcontracts are entered into or the period in which they are performed.

2. What is the status of contracts for which bids are opened or negotiations are concluded on or after November 8, 2005?

All contracts for which bids are opened or negotiations concluded on or after November 8, 2005, must incorporate the Davis-Bacon provisions, the applicable wage determination(s), the payroll reporting requirements of the Copeland Act and any other applicable provisions under governing procurement laws and regulations.

3. What areas of the country will the reinstatement of the Davis-Bacon Act affect?

The reinstatement of the DBA affects the areas outlined in the President's proclamation of September 8, 2005. This includes the following: All parishes in Louisiana (64 parishes); Six counties in Alabama (Baldwin, Choctaw, Clarke, Mobile, Sumter, Washington); All counties in Mississippi (82 counties) and three counties in Florida (Broward, Miami-Dade, Monroe).

4. Will the Department of Labor issue guidance on the reinstatement of the Davis-Bacon Act Provisions?

The Wage and Hour Division of the Department of Labor will provide guidance on the reinstatement of the DBA in an All Agency Memorandum (AAM), which will be accessible on www.dol.gov and www.wdol.gov, the Department's Web site for obtaining current DBA wage determinations. Further information can also be obtained by calling the Wage and Hour Division's toll free number: (866) 4US-WAGE.



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MEMORANDUM NO. 200

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL
GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: ALFRED B. ROBINSON, Jr. *AR*
Deputy Administrator

SUBJECT: Revocation of Proclamation 7924 Suspending the Davis-Bacon and Related Acts
Provisions

On November 3, 2005, President George W. Bush issued a Proclamation that revoked Proclamation No. 7924 of September 8, 2005 (See All Agency Memorandum 199), and reinstated the provisions of the Davis-Bacon and Related Acts in areas affected by Hurricane Katrina.

AFFECTED CONTRACTS AND SOLICITATIONS

Proclamation No. 7959 (copy attached) revokes Proclamation No. 7924 of September 8, 2005, "as to all contracts for which bids are opened or negotiations concluded on or after November 8, 2005."

Contracts awarded without Davis-Bacon provisions during the period beginning September 8, 2005, and ending November 7, 2005, are unaffected by the November 3, 2005, Proclamation. Also, any subcontracts awarded pursuant to a prime contract not subject to Davis-Bacon provisions should not contain prevailing wage determinations regardless of the date the subcontracts are entered into or the period in which they are performed. Contracts for which bids are opened or negotiations concluded on or after November 8, 2005, including any procurement actions that are resolicited or postponed so that the bid opening occurs on or after November 8, 2005, must incorporate the Davis-Bacon provisions and applicable wage determinations under governing procurement laws and regulations.

For projects assisted under the National Housing Act, the date of the initial endorsement of the mortgage or the start of construction, whichever occurs first, is the date governing application of the Davis-Bacon provisions. Where the earliest of these events (initial endorsement or start of construction) occurs on or after November 8, 2005, Davis-Bacon provisions are applicable to the project. Similarly, projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, are subject to the Davis-Bacon labor standards where the agreement to enter into a housing assistance payments contract is awarded or construction is started, whichever occurs first, on or after November 8, 2005. For construction work undertaken under the U.S. Housing Act of 1937, or the Native American Housing Assistance and Self-Determination Act, where there is no contract award, Davis-Bacon labor standards are applicable to covered construction work performed on or after November 8, 2005.

WAGE DETERMINATIONS

Every solicitation that is modified to incorporate the Davis-Bacon provisions as a result of the reinstatement must include the appropriate current Davis-Bacon wage determination(s). General wage determinations for the affected geographic areas and the current prevailing wage rates can be accessed at www.wdol.gov, the Department's official Web site for obtaining current wage determinations. This Web site contains general wage determinations issued pursuant to section 1.5 of Department of Labor Regulations, 29 C.F.R. Part 1. Agencies may use such general wage determinations without notifying the Department of Labor provided that any questions concerning their use are referred to the Department of Labor in accordance with section 1.6(b) of Regulations, 29 C.F.R. Part 1.

CONTRACT CLAUSES

Pursuant to Department of Labor Regulations, 29 C.F.R. Part 5, contracting officers are required to incorporate the labor standards clauses set forth in section 5.5 of Regulations, Part 5, in full into any covered solicitation or contract for construction. See also the Federal Acquisition Regulations at 48 C.F.R. 22.407. Pursuant to Regulations, Part 5, and All Agency Memorandum 199, the Department of Labor authorized the modification of those contract clauses to omit certain labor standards requirements deemed unnecessary during the suspension of the Davis-Bacon and related Acts. That authority is hereby rescinded. Contracting agencies should incorporate the pertinent clauses as set forth in Regulations, Part 5, as well as the payroll reporting requirements of the Copeland Act, in their entirety into any contracts which, as a result of the revocation of the suspension, now require the payment of prevailing wage rates in accordance with the Davis-Bacon Act.

Attachment